

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JOSEPH DOWNING,

Plaintiff,

v.

DR. KHAN, et al.,

Defendants.

Case No. 2:23-cv-00082-ART-NJK

ORDER

I. DISCUSSION

On May 16, 2023, the Court issued a screening order dismissing portions of a claim with leave to amend and permitting other claims to proceed. Docket No. 14. The Court granted Plaintiff 30 days from the date of that order to file a second amended complaint. *Id.* at 12. The Court specifically stated that if Plaintiff chose not to file a second amended complaint, the action would proceed immediately and only on the Fourteenth Amendment due process inadequate medical care violations for sleep apnea and knee issues against Defendants Doe jail officials when Plaintiff learns their identities (claim 1) and Fourteenth Amendment due process inadequate mental health care violations against Defendants Dr. Khan, Maggie, Vince, and Sgt. Floyd (claims 2 and 3). *Id.* at 13. Plaintiff has not filed a second amended complaint. *See* Docket. Pursuant to the screening order, therefore, this action will proceed on those above-referenced claims only.

II. CONCLUSION

For the foregoing reasons, it is ordered that, pursuant to the Court's screening order, Docket No. 14, this action will proceed immediately and only on the Fourteenth Amendment due process inadequate medical care violations for sleep apnea and knee issues against Defendants Doe jail officials when Plaintiff learns their identities (claim 1) and Fourteenth Amendment due process inadequate mental health care violations against Defendants Dr. Khan, Maggie, Vince, and Sgt. Floyd (claims 2 and 3).

1 The Court requests that Defendants Dr. Khan, Maggie, Vince, and Sgt. Floyd waive service
2 of summons and of the first amended complaint by executing, or having counsel execute, a Waiver
3 of Service of Summons. *See* Fed. R. Civ. P. 4(d). Such Waiver must be filed with the Court within
4 30 days of the issuance of this order. If these Defendants choose to return the Waiver of Service
5 of Summons, their answer or other appropriate response to the first amended complaint, Docket
6 No. 6, will be due no later than September 12, 2023. *See* Fed. R. Civ. P. 12(a)(1)(A)(ii); *see also*
7 42 U.S.C. § 1997e(g)(2).

8 The Court instructs the Clerk of the Court to mail the following documents to Defendants
9 Dr. Khan, Maggie, Vince, and Sgt. Floyd:

10 (a) the first amended complaint, Docket No. 6; and

11 (b) this order, which includes the Notice of Lawsuit and Request to Waive Service of
12 Summons and the Waiver of Service of Summons form.

13 DATED: July 14, 2023.

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16 NANCY J. KOPPE
17 UNITED STATES MAGISTRATE JUDGE
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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JOSEPH DOWNING,
Plaintiff,
v.
DR. KHAN, et al.,
Defendants.

Case No. 2:23-cv-00082-ART-NJK

**RULE 4 NOTICE OF A LAWSUIT AND
REQUEST TO WAIVE SERVICE OF
SUMMONS**

TO: Defendants Dr. Khan, Maggie, Vince, and Sgt. Floyd
c/o Las Vegas Metropolitan Police Department
400 S. Martin Luther King Blvd., Bldg. B
Las Vegas, NV 89106

A lawsuit has been filed against you or individuals/entities which you represent in this Court under the number shown above. A copy of the first amended complaint, Docket No. 6, is attached. This is not a summons or an official notice from the Court. It is a request that—to avoid the cost of service by the United States Marshals Service—Defendant(s) waive formal service of a summons by signing and returning the enclosed waiver. To avoid these expenses, Defendants must file the signed waiver within 30 days from the date shown below, which is the date this notice was sent.

If you file the signed waiver, the action will then proceed as if Defendants were served on the date the waiver is filed, but no summons will be served, and Defendants will have until September 12, 2023, to answer the first amended complaint. If Defendants do not return the signed waiver within the time indicated, the Court will order the United States Marshals Service to personally serve the summons and the first amended complaint on Defendants and may impose the full costs of such service. Please read the statement below about the duty to avoid unnecessary expenses.

Dated: July 14, 2023



NANCY J. KOPPE
UNITED STATES MAGISTRATE JUDGE

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and the first amended complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

“Good cause” does not include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the Court has no jurisdiction over this matter or over a defendant or a defendant’s property.

If the waiver is signed and filed, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must—within the time specified on the waiver form—serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the Court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

UNITED STATES DISTRICT COURT
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Case No. 2:23-cv-00082-ART-NJK
**RULE 4 WAIVER OF SERVICE OF
SUMMONS**

TO: The United States District Court for the District of Nevada:

The following Defendants acknowledge receipt of your request to waive service of summons in this case. Defendants also received a copy of the first amended complaint (Docket No. 6). I am authorized by the following Defendants to agree to save the cost of service of a summons and an additional copy of the first amended complaint in this action by not requiring that the following be served with judicial process in the case provided by Rule 4 of the Federal Rules of Civil Procedure:

_____;

_____;

1 The above-named Defendants understand that they will keep all defenses or objections to
2 the lawsuit, the Court's jurisdiction, and the venue of the action, but waive any objections to the
3 absence of a summons or of service. Defendants also understand that they must file and serve an
4 answer or a motion under Rule 12 within 60 days from the date when the Request for Waiver of
5 Service of Summons was sent, and that default judgment will be entered against them if they fail
6 to do so.

7 Date: _____

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9 _____
(Signature of the attorney
or unrepresented party)

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11 _____
(Printed name)

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13 _____
(Address)

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15 _____
(E-mail address)

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17 _____
(Telephone number)